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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,796	11/20/2002	Andrew A. Adamezyk	201-0145	6560

28395 7590 09/10/2004
BROOKS KUSHMAN P.C./FGTL
1000 TOWN CENTER
22ND FLOOR
SOUTHFIELD, MI 48075-1238

EXAMINER

LAWRENCE JR, FRANK M

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/065,796
Filing Date: November 20, 2002
Appellant(s): ADAMCZYK ET AL.

James W. Proscia
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 22, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 1-25 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,417,947	Hertl et al.	5-1995
5,140,811	Minami et al.	8-1992

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-25 are rejected under 35 U.S.C. 102(b). This rejection is set forth in a prior Office Action, mailed on January 15, 2004.

Claims 1-25 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on January 15, 2004.

(11) Response to Argument

Applicant argues that the Hertl et al. patent fails to disclose every element of the invention because it does not teach using hydrocarbon-removing material having a sufficiently low Si to Al atom ratio such that less than about 50% of the low molecular weight hydrocarbons desorb from the material at a temperature of about 250°C. Although this statement is not disclosed generally in the patent, specific materials are taught in the examples of the patent that anticipate the claimed adsorber material and are inherently capable of performing in the manner recited in the claims. Additionally, the instant specification and claims cite examples of specific materials that are also disclosed in the prior patent as preferred materials for use in the invention.

Because the Si to Al atom ratio is not recited in the independent claims, the examiner has looked to dependent claims and the specification to determine the material being claimed. In Figure 7 of the instant specification, a beta-zeolite having a Si to Al atom ratio of 12.5 is disclosed as a preferred material. The prior patent also discloses using a beta-zeolite having a

Art Unit: 1724

silica to alumina *mole* ratio of 20 (equivalent to a Si to Al *atom* ratio of 10) as a preferred hydrocarbon removing material to be used in conjunction with a water removing material (col. 5, line 19 to col. 6, line 18). Also, the instant specification and claims disclose the preferred atom ratio as "less than 25" to "less than 10" (claims 6-8), equivalent to a mole ratio of less than 50 to less than 20, while Hertl et al. disclose the use of a Y-type faujasite zeolite having a Si to Al mole ratio or greater than 5 (12.5 in Table 2), which is within the claimed range and anticipates the claim limitations. In each of the patent and the instant specification, these ratios are "preferred" and it should be noted that such ratios commonly exceed 200 (see Hertl et al. Table 2). Although Hertl et al. disclose examples that use high Si to Al ratios, the preferred prior zeolites include those with very relatively low Si to Al ratios that anticipate the claims, therefor it is submitted that the materials disclosed in the prior patent are the same as those disclosed in the instant specification and claims and are inherently capable of performing in the manner intended by applicant.

With respect to the rejection under 35 USC 103(a), applicant argues that the Minami et al. patent requires an adsorbent bypass, which is not needed in the instant invention, however the Minami et al. patent is relied on to show that if the Hertl et al. patent were deemed not to disclose the instantly claimed adsorber material, one having ordinary skill in the art would know that a conventional engine exhaust temperature that would exist in the system of Hertl et al., and that the temperature of desorption for the zeolite absorber should correlate to the exhaust temperature so that adsorbed hydrocarbons are not released to the atmosphere.

For the above reasons, it is believed that the rejections should be sustained.

Application/Control Number: 10/065,796

Page 5

Art Unit: 1724

Respectfully submitted,

Frank M. Lawrence
Primary Examiner
Art Unit 1724

Frank Lawrence
8-31-04

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August 31, 2004

Conferees
Duane Smith *DS*
Tom Dunn *TD*

BROOKS KUSHMAN P.C./FGTL
1000 TOWN CENTER
22ND FLOOR
SOUTHFIELD, MI 48075-1238